



## Early Journal Content on JSTOR, Free to Anyone in the World

This article is one of nearly 500,000 scholarly works digitized and made freely available to everyone in the world by JSTOR.

Known as the Early Journal Content, this set of works include research articles, news, letters, and other writings published in more than 200 of the oldest leading academic journals. The works date from the mid-seventeenth to the early twentieth centuries.

We encourage people to read and share the Early Journal Content openly and to tell others that this resource exists. People may post this content online or redistribute in any way for non-commercial purposes.

Read more about Early Journal Content at <http://about.jstor.org/participate-jstor/individuals/early-journal-content>.

JSTOR is a digital library of academic journals, books, and primary source objects. JSTOR helps people discover, use, and build upon a wide range of content through a powerful research and teaching platform, and preserves this content for future generations. JSTOR is part of ITHAKA, a not-for-profit organization that also includes Ithaka S+R and Portico. For more information about JSTOR, please contact [support@jstor.org](mailto:support@jstor.org).

## THE STANDARD OIL FINE.

AUGUST 3, 1907, JUDGE LANDIS, in the United States District Court, for the Northern District of Illinois, sentenced the Standard Oil Co. to pay the largest fine ever inflicted upon any offender.<sup>1</sup> The suit was an indictment on 1,903 counts for violations of the Elkins Rebate Law in receiving concessions on the movement of 1,903 cars of oil from Whiting, Indiana, to East St. Louis, Illinois, and from Chappell, Illinois, to St. Louis, Missouri, during the eighteen months between September 1, 1903, and March 1, 1905. Four hundred and forty-one counts were withdrawn as not necessarily involved in this case. The plea was "Not Guilty." The verdict was "Guilty" on all the 1,462 remaining counts. The fine imposed was the maximum on each count—\$20,000, or a total of \$29,240,000.

The Act provides that it shall be unlawful: "To offer, grant or give, or to solicit, accept or receive any rebate, concession or discrimination" in the interstate transportation of any property whereby it shall, "by any device whatever, be transported at a less rate than that named in the tariffs published and filed" with the Interstate Commerce Commission. Whoever gives or receives "any such rebates, concessions or discriminations \* \* \* shall be punished by a fine of not less than \$1,000 nor more than \$20,000."

The defendant operates an oil refinery at Whiting, Indiana. A terminal railroad company operates a belt line from Whiting across the state line into Illinois and around the city of Chicago. The Chicago and Alton railroad company operates a railroad from Chicago to East St. Louis, Illinois. It crosses the belt line at Chappell, Illinois, near Chicago. From East St. Louis, Illinois, there are three terminal roads that cross the river to St. Louis, Missouri. Four other companies—the Wabash, I. C. R. R., C. B. & Q., and C. & E. I.,—operate between Chicago and East St. Louis.

For several years rates between these places have been fixed by the Chicago-St. Louis Traffic Association, which issues tariffs, to which all these lines are parties, and each company files them, under its own numbers, with the Commerce Commission. May 15, 1899, one of these tariffs, naming rates on classified articles, and special rates on particular commodities, designated Class Tariff No. 24, was filed with the Commission; no special oil rate was mentioned, and no duly published exception of oil was made. Oil would then, under the classification then in use in this territory, take the fifth class rate of 18c per one hundred pounds from Chicago to East St. Louis. The

---

<sup>1</sup> United States v. Standard Oil Company of Indiana, 155 Fed. Rep. 305.

Alton was a party to this tariff, and had filed it with the Commission. It had also filed a joint-tariff with the belt line, referring to this Class Tariff No. 24, and providing that the rate shall be the same from Whiting, Indiana, to East St. Louis, Illinois, as from Chicago to East St. Louis; also schedules of the terminal roads, fixing a rate of  $1\frac{1}{2}$ c per 100 pounds from East St. Louis to St. Louis; all these were filed by the Alton, in its own name, distributed to its agents, and fixed a rate over the whole route; it accepted property at Whiting, delivered it at St. Louis, was paid in full therefor, and settled with the terminal companies at both ends of the line, for their share of the revenue; they had no dealings, whatever, with the defendant.

Shipments were made from Whiting, Indiana, over the belt line to Chappell, thence over the Alton to East St. Louis, and over the terminals to St. Louis, for which the defendant paid the Alton 6c per 100 pounds to East St. Louis, and  $7\frac{1}{2}$ c to St. Louis, instead of the 18c or  $19\frac{1}{2}$ c filed and published rate,—and the Alton paid out of this 6c, or  $6\frac{1}{2}$ c, the switching charges to the terminal companies.

Payment was not made to the Alton local agent at Chappell in the usual way, as in other cases, as the oil was shipped. This agent way-billed the oil at 18c prior to 1903, at 10c from 1903 to May, 1904, and at 18c from June, 1904, to June, 1905; he calculated and entered on the bill the freight charges at such rate on each car, and marked the freight “prepaid” and charged himself therewith. In order to balance this false billing, he was instructed, falsely, to credit himself with an equal amount as “Advances paid on freight forwarded,” as if he had forwarded to connecting lines their share of the charges on through shipments. The charges were actually collected semi-monthly at the 6c rate, on collection bills sent by the auditor of the Alton to the defendant; some of these were accompanied by abstracts showing that the oil had been way-billed by the agent at a 10c or 18c rate.<sup>2</sup>

The defences were: 1. As justifying and excusing the 6c rate, the defendant applied, through its traffic manager, in December, 1902-3-4, to the chief rate clerk in the general freight office of the Alton, for rates on oil from Whiting to East St. Louis, and each time was given a “*special billing order*,” making a rate of 6c on oil for one year each time, collections to be made through the auditor’s office; he also then received an “*application sheet*” applying the

---

<sup>2</sup> Part of the details of the above statement is taken from Mr. Garfield’s Report on Petroleum Transportation, pp. 327, 333, 336. They were obtained from the officers and records of the railroad company.

Chicago-East St. Louis rates to Whiting; and upon inquiry was told that the rate had been filed with the Commerce Commission. Defendant claimed that it was thereby misled into the honest belief that the 6c rate was the lawful one, and in reliance thereon made payments at such rate. The special billing order did not purport to be filed, was not filed, and was not distributed to any freight agent for use in quoting rates to the public, but a copy of it was kept in the tariffs filed in the general freight office. The application sheet, though filed in 1903, did not refer to any special billing order, or any *state* tariff (see below), but did refer to the Class Tariff No. 24, fixing the 18c rate. While the admissibility of the defendant's evidence that it had been misled was being argued, the court asked the defendant's counsel if its traffic manager was, in fact, so misled; the manager was then in court, and after consultation, counsel answered for him that "he assumed the Alton did its legal duty in that regard;" the court ruled that "it was the defendant's duty to make diligent endeavor, in good faith, to ascertain at the carrier's office whether the rate had been so filed, and was chargeable with such knowledge as this would have disclosed;" the traffic manager was then called and testified that he had, on three occasions, inquired of and been informed by the rate clerk, that the rate had been duly filed. The jury was directed to subject the testimony of the clerk and traffic manager "to very careful scrutiny." The jury, having found the defendant guilty, must have concluded that its traffic manager did not make a good faith effort to ascertain the facts, or was not, in fact, misled by what was told him. As pointed out below this seems to be the correct conclusion.

2. The Elkins law is unconstitutional, because: (1) The defendant has a natural, inherent right to make a private contract for a railroad rate, and this law deprives it of this liberty without due process of law; to which the judge answered that he knew of nothing to support this view but the eminence of the counsel advancing it; and, besides, a railroad company, being a public functionary with the power of eminent domain, is fundamentally incompetent to contract in ways specifically declared contrary to the public welfare of all. This certainly is the well settled doctrine in this country.<sup>3</sup> (2) The law delegated to the carrier legislative power in authorizing it to fix rates; to which the court answered that the Supreme Court had many times ruled otherwise as to rates fixed by state

<sup>3</sup> *Atcheson v. Denver Railroad*, 110 U. S. 667; *Interstate Commerce Com. v. Cincinnati, etc.*, R. R., 167 U. S. 47; *Tift v. Southern Railroad*, 123 Fed. Rep. 789; *Smyth v. Ames*, 169 U. S. 466; *Northern Securities Co. v. U. S.*, 193 U. S. 197.

commissions.<sup>4</sup> (3) The law gives the Commerce Commission power to pass ultimately upon the reasonableness of rates fixed by carriers, and thereby deprives the courts of their jurisdiction in the matter; the court answers that the law does not purport to do any such thing. (4) The commerce clause of the Constitution does not authorize Congress to forbid and make criminal the acceptance of a rate less than the published one; the court answers that this simply involves the power of Congress to say that railroad rates shall be uniform, and says, further, that it is settled that Congress has such power, and can enforce uniformity by penalties.

3. The Alton's haul from Chappell to East St. Louis is not interstate commerce. To this the court answered that the test is whether the commodity to be moved is to pass on a continuous journey from one state to another; and when it begins thus to move, interstate commerce has begun and continues to its destination, and any carrier participating in this movement is engaged in inter-state commerce, even if its line is within only one state or county. The evidence,—joint agency at Chappell, joint tariffs over the terminal roads, payment of the terminal companies by the Alton, and the actual movement of the oil in a continuous passage from Whiting to East St. Louis, or St. Louis, under an agreement made with the Alton only,—plainly showed that the Alton was carrying on this traffic as interstate traffic.

This is in accord with the early holding of the Supreme Court in *The Daniel Ball*,<sup>5</sup> and which has been followed ever since.<sup>6</sup>

4. Defendant offered and claimed the right to show that during the period covered by the indictment there was a lawfully published rate of 6¼c (claimed to be equal, because of certain switching charges, to the Alton's 6c rate) over the C. & E. I. road from Whiting to East St. Louis. This was offered to show there was no motive to ship over the Alton and violate the law, when shipments could have been as easily made over the C. & E. I. at an equal lawful rate. The court ruled: "Motive is not material where the proof is clear that it was the defendant who committed the crime" upon the question of guilt or innocence, and excluded the evidence on this point, relying upon *Schmidt v. U. S.*,<sup>7</sup> which sustains this view.

<sup>4</sup> See Railroad Commission Cases, 116 U. S. 307, et seq.; Louisville and Nashville R. Co. v. Brown, 123 Fed. Rep. 946.

<sup>5</sup> 10 Wall. 557.

<sup>6</sup> *Coe v. Errol*, 116 U. S. 517; *Cincinnati Ry. v. Interstate Com. C.*, 162 U. S. 184; *Interstate Stock Yards v. Indianapolis Ry.*, 99 Fed. Rep. 472; *Kelly v. Rhoads*, 188 U. S. 1.

<sup>7</sup> 133 Fed., 257, on 263. A similar rule is laid down in *Stone v. State*, 105 Ala. 60; *Marcum v. Commw. (Ky.)*, 1 S. W. Rep. 727; *State v. David*, 131 Mo. 380, on 397; *People v. Feigenbaum*, 148 N. Y. 636.

The rule is also stated in a recent authority thus: "The existence or non existence of motive is immaterial, where the guilt of the accused is clearly established."<sup>8</sup>

The court, however, also ruled that if it should later appear that there was such a lawful rate in force, it would be admitted and considered in mitigation of the penalty; and after the verdict of "guilty," directed that such evidence be produced. This showed that in September, 1895, the C. & E. I. (with other companies) filed a joint class tariff No. 7986, fixing an 18c rate on oil from Chicago to St. Louis; in October, 1895, the same company filed a commodity tariff No. 8073, fixing a  $6\frac{1}{4}$ c rate on oil from Dolton, Illinois (the C. & E. I. crossing of the belt line from Whiting), stating that a switching charge of \$3.00 would be absorbed on shipments from Whiting. On July 6, 1903, this company filed class tariff No. 17679, saying that Chicago rates should apply (with certain specified exceptions not including oil) between Chicago suburban stations (including Dolton and Whiting) and East St. Louis, and referred particularly to the tariff No. 7986, fixing an 18c oil rate, and the Chicago-St. Louis Traffic Ass'n tariff No. 24, of 1899, above mentioned, likewise fixing an 18c rate. This tariff No. 17679, thus indicating an 18c rate to the public, was filed with the Commission and distributed to all the C. & E. I. agents. It was not, however, included in the schedules offered in evidence by the defendant to show the existence of the  $6\frac{1}{4}$ c rate over that road. July 7, 1903, the C. & E. I., recognizing that tariff No. 17679 nullified the  $6\frac{1}{4}$ c Dolton-East St. Louis rate of tariff No. 8073, issued amendment No. 1 to tariff No. 7986 above, purporting to cancel the  $6\frac{1}{4}$ c oil rate of tariff No. 8073, and named a commodity rate of  $6\frac{1}{4}$ c on oil from Chicago and Dolton to East St. Louis; this was not filed until March, 1906, one year after the period covered by the indictment. On these facts, the court held that the situation on the C. & E. I. neither excused nor palliated the defendant's acceptance of the known unlawful 6c Alton rate.

It appears from the foregoing that it is doubtful if the tender of evidence to show a lawful  $6\frac{1}{4}$ c rate on the C. & E. I., was made in good faith, when the latest tariff filed, showing otherwise, was withheld. If the defendant's evidence had been admitted, it would have permitted the government to show the truth,—and that was contrary to the defendant's claim. It could not then be prejudiced by the exclusion of this evidence.

5. Prosecution can be for only one offence, under the law; 1,462 cars were shipped; 3 different yearly contracts were made;

---

<sup>8</sup> 12 Cyc. 149.

36 bills were presented and paid by the defendant; but the number of cars in each order or shipment was not shown. The defendant claimed there could be a penalty for one count only, or for three contracts only, or, at most, for 36 payments made, or not at all, unless the number of different shipments was shown. The court, citing no cases, held the law was violated every time any property is transported contrary to the act; there is nothing to show Congress intended that if a defendant shall offend habitually he shall have immunity save only as to one violation. Such a rule would encourage one who violates the law once to disobey it by wholesale, in order to swell his purse after paying a single fine. The legal rate was on a car lot basis; the unlawful 6c rate was made and accepted on the same basis; the bills were rendered and paid at that rate per car, each car being specifically itemized. Neither party offered any evidence as to the number of separate shipments. These circumstances, the court says, justify a finding of "guilty" on each count for the shipment of each car.

This view of the court is sustained by several well considered cases,<sup>9</sup> though there are some exceptions.<sup>10</sup>

6. The offense was wholly technical,—no one has been injured because there was no other shipper of oil. The court answers: It is novel for a convicted defendant to urge the complete triumph of a dishonest course as a reason why he should go unpunished. Of course, there was no other shipper of oil, nor could there be so long as the Standard could ship for one-third of what any one else would have to pay. To the extent the defendant has not paid, other shippers have had to pay; so, too, common honesty among men ought not to be altogether ignored; the execution of such a commercial policy involves the contamination of subordinate officers and employes, even looking to the time when the testimony will be required to protect the offender from its violation of the law. "The men who thus deliberately violate the law wound society more deeply than does he who counterfeits the coin or steals letters from the mail."

The Elkins law was designed to meet just this situation. The Interstate Commerce law made unlawful discriminations of the kind in existence at Whiting for many years, but made no provision for punishing the sinning shipper, but only the offending carrier.

7 For the guidance of the court in fixing the penalty, it asked

<sup>9</sup> *O'Neil v. Vermont*, 58 Vt. 140 (liquor seller convicted of 307 offenses, fined \$20 each, and sent to prison for 19914 days in default of payment; s. c. 144 U. S. 323; *Southern Express C. v. Walker*, 92 Va. 59, 41 L. R. A. 436; *State v. Baker*, 105 La. 373; *Bliss v. U. S.* 105 Fed. Rep. 508; and see note 35 L. R. A. 561.

<sup>10</sup> *In re Snow*, 120 U. S. 274; *State v. Whitaker*, 48 La. Ann. 527.

information concerning the ownership of the capital stock of the Standard Oil Co. of Indiana, and the earnings of such holding company. Defendant's counsel refused to give this; subpoenas were then issued for the officers of the Standard Oil Co. of Indiana and of New Jersey. Counsel requested that these be recalled, and a subpoena issued to a single subordinate official, who, it was said, had and could give the desired information; the court then asked if he would answer, and was informed he might decline on advice of counsel; the court then ordered subpoenas to be served, and they were. The testimony showed that the Standard Oil Co. of New Jersey owned all but four \$100 shares of the \$1,000,000 capital stock of the Indiana company; that the capital stock of the New Jersey company was about \$100,000,000; that its net earnings for the period covered by the indictment were about \$200,000,000, and the annual dividends declared were about 40%, or \$40,000,000. The enforced attendance and testimony were resisted as extra judicial and unwarranted; but the court relied upon the clearly expressed rule in BISHOP'S NEW CRIMINAL LAW, Vol. I, §§ 948-50 to the contrary. The court says the Standard Oil Co. of New Jersey "is the real defendant, for the reason that if a body of men organized a large corporation under the laws of one state for the purpose of carrying on business throughout the United States, and for the accomplishment of that purpose absorb the stock of other corporations, such corporations so absorbed have thenceforward but a nominal existence; they cannot initiate or execute any independent business policy, their elimination in this respect being a prime consideration for their absorption."

This statement seems to accord with well recognized authorities. In every successful *quo warranto* proceeding the shareholders are in fact punished for the sins of omission and commission of the corporation. It has repeatedly been held that when the government is complainant, and in many other cases, no hocus-pocus corporate cloak, used as a shield to hoodwink the public, commit frauds, violate the law, and reap the illegal benefits, can be successfully relied on as a defense by the real offenders.<sup>11</sup>

8. The defendant had reserved the right "to present circumstances which it could not introduce in evidence upon the trial in mitigation of the penalty." The court offered, while the officers were present, "to hear any evidence that might be submitted, tending to show that neither the Indiana nor the New Jersey company had ever

---

<sup>11</sup> *State v. Standard Oil Co.*, 49 O. S. 137; *People v. North Riv. Sug. Ref. Co.*, 121 N. Y. 582; *Brundred v. Rice*, 49 O. S. 640; *Metcalf v. Arnold*, 110 Ala. 180; *Robinson on Patents*, § 912.

before violated the Interstate Commerce Law." After a day or two consideration and conference with the officers, the defendant's counsel declined to present any witness upon the subject, choosing, rather, to stand upon the law's presumption of innocence, saying "for this defendant now to assert its innocence of matters that it is not charged with, or attempt to show that it has been innocent of any wrong-doing in connection with matters outside of this record, when there is nothing before the court charging it with such wrong-doing, would present a situation unheard of in Anglo-Saxon jurisprudence." The court said, however, that where the crime charged is acceptance of preferential rates in violation of a law 20 years old, during a period of 18 months, shipping 1,900 cars at a rate of one-third of that available to the general public, when its traffic affairs are in charge of an expert official, frequently visiting the freight office of the railway, the rate being named in an unpublished special billing order, settlement being made through the auditor's office in an unusual way, and where the defendant has persistently claimed a constitutional right to make a private contract for such rate, he was unable to presume that the defendant was convicted of its virgin offense.

Mr. Bishop says, the court, having discretion as to the punishment, "will look into any evidence proper to influence a judicious magistrate to make it heavier or lighter," and may, after verdict by some authorities, consider separate crimes not charged in the indictment, and even hearsay has been allowed.<sup>12</sup> The long series of public investigations and official reports from 1884 to 1906, upon the practices of the defendant, would almost justify judicial notice of the fact this was not the first offense nor the sum of its offending, and after an opportunity to show otherwise was given and declined, justified the court's inference.

9. The defendant did not claim that the Elkins law in naming a penalty of \$1,000 to \$20,000 was unconstitutional, as fixing an excessive fine or a cruel or unusual punishment, but did argue that to hold it for 1,462 offenses would violate the constitutional provision against the imposition of excessive fines. To this the court says: "It is the view of the court that for the law to take from one of its corporate creatures, as the penalty for the commission of a dividend-producing crime, less than one-third of its net revenues accrued during the period of its violation, falls far short of the imposition of an excessive fine, and surely to do this would not be the exercise of as much real power as is employed when sentence is imposed taking from a human being one day of his liberty,"—and

---

<sup>12</sup> New Criminal Law, Vol. I, §§ 948, 950.

especially so when the crime and revenues are so peculiarly and intimately related.

By the weight of authority, constitutional provisions as to excessive fines and cruel punishments are directed to legislative bodies primarily, and fines within the limits fixed by the legislature are not excessive, unless the law is first attacked and held to be unconstitutional.<sup>13</sup> "Cruel and unusual" means inhuman and barbarous.<sup>14</sup> A statute fixing \$1,000-\$10,000 fines, for violating rate regulations, is not unconstitutional.<sup>15</sup> It is difficult to see upon what ground a court can say a \$20,000 fine is excessive if it is shown to be inflicted for a deliberate and systematic violation of a law designed to protect shippers throughout the United States.

The foregoing is an effort to set forth concisely and accurately the issues raised and decided in an opinion which reads as if it were the studiously temperate production of an honest man, whose moral sense has been so shocked by the situation developed as to make it difficult to avoid using much harsher and more vigorous language. The opinion provoked extensive comment, both favorable and unfavorable.

After the decision, an extraordinary pamphlet, "From the Directors of the Standard Oil Co. to its Employes and Stockholders," was published and widely circulated, saying they desire "to emphasize for the half-million people directly interested in its welfare, the assurance of the company's absolute innocence of wrong-doing in any of the prosecutions instituted against it in the Federal Courts;" the recent case "made notorious by the sensational fine of \$29,240,000, is no case of rebate or discrimination but simply of the legality of a freight rate, an open 6c rate, a rate used over three competing railroads for from ten to fourteen years. The trial judge refused to allow proof that the 6c rate had been filed by the C. & E. I., and was therefore a legal rate. He refused to allow proof that linseed oil was carried at 8c, and other bulk commodities as low as 5c. He insisted that 18c was the only legal rate for oil, when no one had ever paid it, and when it was authoritatively sworn it did not apply to oil." It has been difficult to get a fair hearing "in a large portion of the press, swayed alike by socialistic outcry from below and political pressure from above." In proof of the latter, it alleges that the president's messages and official reports were specially timed to advance legislation and influence decisions in matters affecting the Standard Oil Co., and adds: "That our friends may know

---

<sup>13</sup> Note 35 L. R. A. 561.

<sup>14</sup> In re Kemmler, 136 U. S. 436, 446.

<sup>15</sup> Burlington, etc., Ry. v. Dey, 82 Ia. 312, 31 Am. St. R. 477.

more fully how the truly independent are upholding right and honesty, a few editorial comments are appended," following a "statement of James A. Moffett, president, Standard Oil Co. of Indiana." Among other things, Mr. Moffett says, "There is no question of rebate or discrimination in this case;" the government contends "that the lawful rate is 18c; the defendant claims, first, that the lawful rate was 6c; and if 6c was not, it was the rate issued to the Standard by the Alton as the lawful rate," and "it was justified in believing, from its own investigation, and from the information received from the railroad company, that 6c was the lawful rate;" "the 18c rate was a class and not a commodity rate," and the chairman of the Traffic Association issuing it "testified that it was never applied, and was never intended to apply to oil." "The rate on oil between Chicago and East St. Louis, over the Alton, for 14 years,—1891 to 1905—was always 6c per 100 pounds; this was an open, published rate, known to every one concerned in the shipment of oil, and generally known in all railroad circles in Chicago." "Both Chicago and East St. Louis being in Illinois, the railroad company was under no legal obligation to file the rate with the Commerce Commission; but Whiting being in Indiana, shipments from Whiting to East St. Louis were, technically at least, interstate; and the Alton filed an application sheet applying to Whiting the Chicago rates, and deemed the filing of the application sheet all that was necessary under the law." He then recites the defendant's offer to prove, and the court's refusal, to admit the evidence, that the C. & E. I. rate on oil was 6c; and low commodity rates were made on other products, such as malt and cornmeal, 7c; brick, 5c; starch, peas, beans, popcorn, linseed oil in tanks, 8c; "knowing that the rate on the Eastern Illinois was but 6c; having no reason for shipping over the Alton in preference to the Eastern Illinois, and able to ship all of its oil over the latter road, we insist that the facts, many of which the court did not permit us to show, not alone demonstrate innocence, but inherently forbid the idea of guilt."

Then follow nearly thirty pages of editorial comments, mostly of a scurrilous kind: the opinion "was a piece of judicial sensationalism, as full of holes as an imported cheese;"<sup>16</sup> "playing to the galleries;"<sup>17</sup> "clap-trap and farce,"<sup>18</sup> and a "time of frenzied politics;"<sup>19</sup> "to advance the political and Chautauqua interests of JUDGE LANDIS;"<sup>20</sup> "venom and bias;"<sup>21</sup> "the outcome of the administra-

---

<sup>16</sup> *Denver Post*.

<sup>17</sup> *Daily Mining Gazette*.

<sup>18</sup> *Bellman*, Minn.

<sup>19</sup> *Leslie's Weekly*.

<sup>20</sup> *Atchison Globe*.

<sup>21</sup> *Rochester Post Express*.

tion's campaign against great corporations, wise and necessary as its early stages were, is the socialism of Karl Marks and Ferdinand and LaSalle;"<sup>22</sup> "a peril to all investors;"<sup>23</sup> "a blow at enterprise;"<sup>24</sup> the evidence excluded "makes the case look like a persecution;"<sup>25</sup> "too much of the savor of the opera-comique to be quite impressive;"<sup>26</sup> "something besides a high sense of justice and dignity \* \* \* urged the court to its decidedly flamboyant declaration \* \* \* making so open a bid for the plaudits of the masses;"<sup>27</sup> "what would happen if the Landis decision was enforced? Panic and commercial ruin."<sup>28</sup> Other similar comments are given. It is evident, from a perusal of these editorial effusions, that the writers had given much more attention to Mr. Moffett's statement than to the Judge's opinion, and seemed to be wholly ignorant of the contents of Mr. Garfield's report; besides they wholly ignore, and fail to mention, the fact that a jury of twelve men, sworn to render a *true verdict* upon the facts before them, found the defendant *guilty*; and an article in the *North American Review*, by Mr. F. D. Pavey, in September, 1907, similarly relies for its facts mainly on Mr. Moffett's statement, and for its conclusion upon ignorance of Mr. Garfield's report. As, for example, Mr. Moffett alleges the 6c Alton rate was generally known in railroad circles in Chicago. In answer to repeated inquiries by the Bureau of Corporations of the station agents of these three roads, in and around Chicago, as to what the East St. Louis rate was upon oil, the 18c rate was given without exception. These agents also, at the junction stations, with the exception of the C. B. & Q., billed the oil at higher rates.

Before one can form a reasonably fair conclusion of the propriety and justice of the fine imposed by JUDGE LANDIS, it is necessary to understand something more of the history of oil shipments by the Standard Oil Co. from its Whiting, Ind., refinery throughout the country during the past 17 years, than appears in the opinion delivered by the Judge. It is safe to assume that the government placed before the court and jury such part of this history as it deemed relevant out of the abundant material set forth in Mr. Garfield's report of May 2, 1906. Although the Standard's pamphlet above referred to calls Mr. Garfield's report "a tissue of old misrepresentations," there is no fact relied upon by the defense in that pamphlet,

---

<sup>22</sup> *Railway World*.

<sup>23</sup> *N. Y. Times*.

<sup>24</sup> *American Grocer*.

<sup>25</sup> *Lewiston Daily*.

<sup>26</sup> *Boston Daily Tribune*.

<sup>27</sup> *Chicago Record Herald*.

<sup>28</sup> *Wall Street News*.

nor urged in court (so far as appears from the opinion), but what is set forth with fullness and fairness by Mr. Garfield, showing its bearing upon, and its connection with what has been the most abominable and iniquitous course of discrimination in favor of the Standard for nearly twenty years in the history of railroad transportation. It is also safe to assume that the statements made in this pamphlet are as strong as the company can make in its own defence. These statements, issued with all the air of injured innocence, when considered in connection with other relevant facts exhibiting the whole situation, instead of showing "absolute innocence" come nearer showing "absolute guilt." The jury evidently got at the truth.

It is possible here to outline this history in connection with Whiting alone, without referring to similar conditions existing elsewhere throughout the country in favor of the Standard.

Whiting, Indiana, is two miles from the Illinois state line, and seventeen miles from the center of Chicago, and is within the Chicago switching district. The Standard's refinery there was built in 1889, and opened in 1890. It refines one-third of the oil sold by that company in the United States, and it supplies oil to more than half of the territory of the United States.<sup>29</sup> The Standard has refineries located in twelve different states, and in the central territory at Buffalo, N. Y., Franklin and Pittsburgh, Pa., Parkersburg, W. Va., Cleveland and Lima, O.<sup>30</sup> At or near these places there are competing refineries, as there are also at Findlay and Toledo, O., Detroit, Chicago, Cincinnati, Louisville, Evansville and St. Louis and a few other places in the central states.<sup>31</sup>

In nearly all of this territory, preferential rates for the same distances have been made to the Standard from Whiting over independent refineries.<sup>32</sup> For example, over the Lake Shore road, which reaches Toledo and Whiting, rates on oil from Whiting *eastward* were, until 1905, 4½c for 42 miles; 5c for 69 and 84 miles; 8c for 115 and 139 miles; 9c for 164 miles; while from Toledo *west* they were 6½c for 33 miles; 8c for 66 miles, 10½c for 112 miles; 11c for 134 miles; 12c for 149 miles.<sup>33</sup> At the same time, the oil rate from Whiting east was 2½c to 4c below the 5th class rate (the class in which oil belongs, unless special rates are made), while from Toledo west it was from 1c below to 1c above the 5th class rate.<sup>34</sup>

---

<sup>29</sup> Report, p. 21.

<sup>30</sup> *Ib.* 46.

<sup>31</sup> *Ib.* 54, 179.

<sup>32</sup> Report, pp. 179-244 (Map, p. 179).

<sup>33</sup> *Ib.* p. 183.

<sup>34</sup> *Ib.* p. 183.

Exactly similar conditions existed on the Pennsylvania road between Pittsburg and Whiting, in favor of the latter place.<sup>35</sup> Like preferences were made in Michigan; the rate from Whiting to Kalamazoo (141 miles) was  $8\frac{1}{2}c$ ; from Toledo to Kalamazoo (136 miles) was  $12c$ ; while the fifth class rates were exactly the same.<sup>36</sup>

To Ohio river points the same preferences were given.<sup>37</sup> Whiting is very nearly the same distance (295 miles) from Cincinnati, Louisville and Evansville, and the open rate on oil has been  $11c$  to each of these places, though to Evansville there has been a secret rate of  $8\frac{1}{4}c$ , and part of the time  $6c$ .<sup>38</sup> From Toledo to Cincinnati (211 miles), the oil rate has been  $10c$ ; and from Cleveland (244 miles)  $10\frac{1}{2}c$ ,—which represent  $95/100c$  and  $86/100c$  per ton per mile from these places, as compared with  $75/100c$  per ton per mile from Whiting, the oil rate being  $4c$  below 5th class from Whiting, and only  $2\frac{1}{2}c$  below from Toledo. From Toledo to Evansville (382 miles) the oil rate has been  $15c$ ,  $79/100c$  per ton per mile; while from Whiting the secret rate was  $8\frac{1}{4}c$ , or  $57/100c$  per ton per mile, and part of the time lower yet.<sup>39</sup>

To East St. Louis, the secret rate of  $6c$  from Whiting (282 miles by the shortest route) has existed for nearly 17 years; the rate from Toledo (433 miles) has been  $17c$ , and from Cleveland  $19\frac{1}{2}c$ ; the fifth class rate from Whiting (according to the distance basis of adjusting rates adopted by the Central Freight Association for this territory) would be  $14\frac{1}{2}c$ ; from Toledo  $18c$ ; or the oil rate from Whiting is  $8\frac{1}{2}c$  less, and from Toledo  $1c$  less than the 5th class rate.<sup>40</sup>

Again, prior to the opening of the Whiting refinery in 1890, connecting railroads generally prorated on oil from eastern refineries to the middle, the western and the southwestern states, so that the through rate was less than the sum of the rates upon the separate lines. This was discontinued as soon as the Whiting refinery was opened, although it was continued upon nearly all other commodities. After this, the rate from the eastern refineries of  $12c$  to  $19\frac{1}{2}c$  to Chicago must be added to the rate from Chicago, making a large increase over former prorating rates<sup>41</sup> So, also, after the Whiting refinery was opened, the railroads refused to make through rates on oil from points east of Whiting to the southwest, although they did

---

<sup>35</sup> *Ib.* p. 185.

<sup>36</sup> *Ib.* pp. 195, 198.

<sup>37</sup> *Ib.* p. 187 (Map, p. 244).

<sup>38</sup> *Ib.* 187, 188 (Maps).

<sup>39</sup> *Ib.* p. 188 et seq.

<sup>40</sup> *Ib.* p. 316, et seq. 345.

<sup>41</sup> *Ib.* p. 21.

on all other commodities of a similar grade.<sup>42</sup> The eastern refineries had to pay from 17c to 24½c per 100 pounds, or from 11c to 18½c more than the Whiting secret rate to East St. Louis, the gateway to the southwest. The foregoing indicate, with the exception of the secret rates, advantages given to the Standard in the open adjustment of rates. They have been so complete, systematic and continuous as to make it impossible to be merely fortuitous.<sup>43</sup>

Still another method of manipulation of open rates working to the same end, and resulting practically in secret or semi-secret rates, was the scheme known as the Grand Junction combination.<sup>44</sup> Grand Junction is an obscure village of 400 inhabitants, 52 miles east of Memphis, Tennessee, and is the junction of the Illinois Central and the Southern railways. For a long time, the Ohio river has been made the basis of rates for shipments from north to south, or *vice versa*, and prorating was not used upon oil or other commodities, with very few exceptions. The local rate from the origin to the Ohio river was added to the local rate, from there to the destination, in order to make the through rate.<sup>45</sup> Prior to 1896 the oil rate from Whiting to the Ohio river was 12c, and after that 11c; these rates were published in comprehensive class and commodity tariffs for years, by the Central Freight Association, representing all the roads connecting Chicago and the Ohio river, including the Illinois Central and the C. & E. I., and these were the rates filed with the Interstate Commerce Commission.<sup>46</sup> The L. & N. and the Southern are the most important lines carrying freight from the river south, and for years have published special oil tariffs from river points to points further south reached by their lines. The Southern tariff expressly states there are no rules or regulations affecting rates except those filed with the Commerce Commission. The Southern does not reach the Ohio river directly, but only over the Illinois Central from Grand Junction. At the time it published its tariff, it issued a division sheet (which was not filed with the Commission, nor posted in its office for inspection, although a copy was given to the Standard, and no one else) showing what proportion of the published rates should go to the Illinois Central from Evansville to Grand Junction, and to the Southern from there to destination. This was from 8c to 18½c for the Illinois Central, depending upon destination, and making the proper public charge for oil from Whiting to Grand Junction, over the Illinois Central, from 19c to 29½c.<sup>47</sup> As

---

<sup>42</sup> *Ib.* p. 22.

<sup>43</sup> See Report, pp. 22-25.

<sup>44</sup> *Ib.* pp. 248-274.

<sup>45</sup> *Ib.* p. 247.

<sup>46</sup> *Ib.* pp. 248-9.

<sup>47</sup> *Ib.* pp. 249-50.

a fact, however, for many years oil was carried for the Standard from Whiting to Grand Junction at 13c; this was a secret rate until 1896, when the Illinois Central filed with the Commission a tariff reading from *Riverdale* to Grand Junction, naming the 13c rate when destined to points on the Southern, and saying "the above rate will apply from Whiting." Riverdale is the small junction crossing of the Illinois Central and the belt line from Whiting, near Chicago. The next year the C. & E. I. issued and filed a joint tariff naming the same rate from *Dolton*, Ill., over its line, and the E. & T. H. and the Illinois Central, they being parties thereto, applying also to Whiting; the Illinois Central rate was soon afterward canceled.<sup>48</sup> These rates, conflicting with the generally published tariffs between important points, and also with the well understood methods of establishing rates between northern and southern points, and being between such obscure points as Riverdale and Grand Junction, would never occur in the ordinary course of business to the mind of any shipper, were, though technically published by filing, practically secret; and in fact when inquiry was made of the railroad agents as to oil rates to southern points, the regularly published rates, based on the Ohio river division, were named.<sup>49</sup> This first C. & E. I. 13c tariff has a memorandum upon it, saying it was "arranged with Howard Page, Standard Oil Co.," who was then its general traffic manager.<sup>50</sup> Its re-issue next year bears memoranda to the effect that the railroad company *could* re-issue it by consent of the Standard's traffic manager at Whiting.<sup>51</sup> He, in connection with the C. & E. I. officers, as shown by their letters, arranged for *blind billing* of the oil,—"*From Standard Oil Co., Whiting to Grand Junction, for beyond, weight 32,192 pounds, paid,*" showing no rates nor amounts; the 13c rate, and the proper amounts were inserted only after the way bills had reached the railroad freight auditor's office. The Standard gave instructions direct to the railroad agent at Grand Junction as to the destination of the oil in each car billed to the rubber-stamp-marked "Standard Oil Co., Grand Junction, for beyond."<sup>52</sup> The result of this scheme was to make the oil rate from Whiting to Atlanta, Ga. (shortest distance, 733 miles, and via Grand Junction, 1,003 miles) 33.2c; and from Toledo (687 miles) 47½c. From Whiting to Chattanooga (595 miles, via Grand Junction, 849 miles) 25.9c; from Toledo (549 miles) 43c. The classified rates on other similar commodities were less from Toledo

---

<sup>48</sup> *Ib.* p. 251.

<sup>49</sup> *Ib.* pp. 268-9, 335, 336, 337.

<sup>50</sup> *Ib.* p. 270.

<sup>51</sup> *Ib.* p. 271.

<sup>52</sup> *Ib.* p. 273.

than from Whiting. The regularly published oil rate from Whiting to Birmingham, Ala., was 44c, and was stated to be so by Mr. Archbold for the Standard Oil Co., in answer to a request of the Industrial Commission in 1901; at that very time, however, the above secret rate was in effect, making the rate then actually paid on oil 29½c from Whiting to Birmingham, instead of 44c, while the Toledo rate was 47½c for 128 miles shorter haul.<sup>53</sup>

Still another device used for concealing the true rates charged has been the so-called *state* rate. Whiting and Evansville are both in Indiana, but oil shipped between these places over the belt line and the C. & E. I. passes across the Illinois line to *Dolton*, Ill., the junction point of the two roads. However, the C. & E. I. treated the traffic as intrastate instead of interstate, as has since been ruled by the Supreme Court,<sup>54</sup> and made, in 1892, an 8¼c rate from Whiting to "Evansville (proper),"—this being the recognized way of indicating that the rate would not apply beyond; this was not filed with the Commerce Commission, because, it was claimed not to be interstate.<sup>55</sup> In 1897, this tariff was re-issued and "proper" was omitted, and, as a memorandum from the railroad office showed, Mr. Page, then the Standard's traffic manager, "did not desire this rate filed with I. C. C.," and "for that reason" we "make state tariffs."<sup>56</sup> These tariffs continued till discovered by Mr. Garfield in 1905, and had been used constantly by the Standard on through shipments of oil to the south beyond Evansville, in territory not reached from Grand Junction. The duly published rate to Evansville was 11c, and the Standard's shipments were so billed and consigned to places beyond Evansville; the amounts at 11c were sent to the general offices of the railroad company, which made collections at the 8¼c rate upon collection bills showing the oil had been billed at 11c. The Standard officers could not be ignorant of the difference between the rate paid and the rate of billing.<sup>57</sup>

The same device was used in connection with the East St. Louis rate.<sup>58</sup> In 1896 the C. B. & Q. issued a tariff on oil from Chicago to Illinois points, not naming East St. Louis, but referring to a special tariff for rates on oil to that point. This Chicago tariff was not (nor was any special tariff) filed with the Commerce Commis-

<sup>53</sup> *Ib.* pp. 255, 258, 274.

<sup>54</sup> *Hanley v. Kans. C. R. Co.*, 187 U. S. 617. There was, under the holding in *Lehigh V. R. Co. v. Pennsylvania* (1892), 145 U. S. 192, some reason to think this was intrastate traffic, although no reason to call traffic between Whiting and East St. Louis such.

<sup>55</sup> Report, p. 276.

<sup>56</sup> *Ib.* p. 277.

<sup>57</sup> *Ib.* pp. 279-284.

<sup>58</sup> Report, pp. 316-369.

sion, because it was a state tariff, though the road applied the rates to Whiting, Indiana. It was generally distributed among the road's agents in the state and was published to that extent. This road was the first to grant the 6c rate on oil from Chicago to East St. Louis, which it did by a *special billing order* already explained; this was not filed nor published, nor open to the inspection of the public. In 1899, and subsequently, this company filed, along with the others, with the Commerce Commission, the general Tariff No. 24 above mentioned, indicating that the rate on oil from Chicago to East St. Louis was 18c; in 1901, it filed an *application sheet* saying that Chicago rates should apply from Whiting, but did not state what these rates were. In 1903 it issued and filed another tariff, stating the rates contained in certain other tariffs specified by number should apply between Chicago and East St. Louis; none of these contained any special rate on oil; but an amendment, filed in 1904, referred to No. 1059, which named a 6c rate on oil; this tariff was only referred to, and the rate was not mentioned; the tariff was not filed with the Commission until 1906, after Mr. Garfield's investigation was made.<sup>59</sup>

The Alton road was a party to Tariff No. 24 above, fixing the 18c rate. In 1899, it issued a public state tariff on many commodities, including oil, but naming no rate thereon from Chicago to East St. Louis; in 1900, however, it named a 10c rate on oil from Summit, a small junction point within the Chicago district, to East St. Louis, and applied it to Whiting; this continued until 1904, when it was discontinued, and the 18c rate became the only published rate. None of the state rates were filed with the Commerce Commission, though applying to Whiting.<sup>60</sup> The history of the C. & E. I. East St. Louis rate has already been given.<sup>61</sup> All these secret and semi-secret rates of these three roads were used to give the Standard advantage over all competitors in the shipments of oil into the south and southwest. And in addition to this, a combination similar to the Grand Junction combination was made from the junction points near Chicago by way of the secret rate to East St. Louis, through Springfield, Mo., to enable the Standard to furnish oil to the far southwest in such a way that no eastern refinery could compete at all.<sup>62</sup> Mr. Garfield estimates that in the year 1904 the Standard reaped, by these secret rates, advantages amounting to nearly \$240,000 on the East St. Louis shipments alone over what competitors would have had to pay.<sup>63</sup>

---

<sup>59</sup> *Ib.* pp. 324-7, 339.

<sup>60</sup> *Ib.* pp. 327-9, 333, 336.

<sup>61</sup> *Ib.* p. 329, 334, 337.

<sup>62</sup> *Ib.* pp. 360-65, 377-83.

<sup>63</sup> *Ib.* p. 13.

Whatever profits it made upon its oil by enjoying a monopoly within this territory because of these rates, were in addition to this amount, and due to this discrimination. In view of this history and much other of a similar kind *ad nauseum*, the effort of the above mentioned pamphlet to lay the blame upon a subordinate rate clerk in the railroad office neither adds dignity nor credence to the claim. It will be difficult for the defendant to convince the public that there has been a general conspiracy among subordinate railroad rate clerks throughout the country for the past twenty years to persecute it by forcing upon an unwilling and innocent beneficiary having expert traffic managers, secret and discriminatory rates in its favor without its consent and connivance.

Appeal or error will, of course, be prosecuted. Not being a capital crime, these can be taken directly to the Supreme Court only so far as the record raises constitutional questions. The questions passed upon in paragraphs 2 (with subdivisions), 3, 4, 5, 6, and 9, are of this kind, and if the decision of that court is desired upon them, it seems the appeal or writ of error must be taken directly to that court, or they will be waived by going first to the Circuit Court of Appeals, which will then have final jurisdiction, unless some law question is certified to the Supreme Court, or that court by *certiorari* brings the whole case before itself for hearing.<sup>64</sup> The final disposition of the case will be awaited with great interest.

H. L. WILGUS.

UNIVERSITY OF MICHIGAN.

---

<sup>64</sup> See *Huguley Mfg. Co. v. Galetton Mills*, 184 U. S. 295; *Spencer v. Duplan Co.*, 191 U. S. 526; *Union Bank v. Memphis*, 189 U. S. 71; *Am. Sug. Ref. Co. v. New Orleans*, 181 U. S. 280; *Robinson v. Caldwell*, 165 U. S. 359; *Motes v. United States*, 170 U. S. 458; *Mure v. Arlington Hotel Co.*, 168 U. S. 430; *Forsyth v. Hammond*, 166 U. S. 506.